IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2848 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANOJBHAI HARIBHAI YADAV

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2848 of 2003

MR BM MANGUKIYA for Petitioner No. 1

MS BELA A PRAJAPATI for Petitioner No. 1

MR AD OZA GP WITH MR RC KODEKAR AGP for Respondents

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/08/2003

ORAL JUDGEMENT

The present petition has been filed by the petitioner - detenu who has been detained under the provisions of Gujarat Prevention of Anti-Social

Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by order dated 27/3/2003 passed by the Police Commissioner, Rajkot City and he has been declared as "bootlegger".

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned counsel for the petitioner at length and learned GP Mr. AD Oza for the respondents. I have also perused the material on record. Learned counsel for the petitioner has submitted that initially the detaining authority detained the petitioner while passing detention order dtd.19/2/2003 under the Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA" for convenience) though he is not Manoj Haribhai Yadav and therefore, by filing the present petition, initially the detenu challenged the said detention order dtd.19/2/2003 on various ground including the ground that the detaining authority has wrongly detained the detenu though he is not Manoj Haribhai Yadav. The detaining authority, thereafter, revoked the earlier detention order dtd.19/2/2003 vide order dtd.27/3/2003 and on the same day, passed a fresh detention order under Prevention of Anti-Social Activities Act, 1985 detaining the detenu as Manharsinh alias Manoj Harisinh Yadav. Therefore, the detenu had filed a Civil Application No.5305 of 2003 for amendment in this Special Civil Application, challenging the fresh detention order dtd.27/3/2003. The said Civil Application has been allowed by this Court vide order dtd.29/7/2003 ordering to carry out necessary amendment in Special Civil Application No.2848 of 2003. Learned counsel for the detenu has mainly submitted that the detaining authority has passed the fresh detention order dte.27/3/2003 against the petitioner on the same grounds, relying upon which earlier detention order was passed i.e. two offences registered against the detenu under the Bombay Prohibition Act. He has further submitted that the both the offences have been been registered on 31/1/2003 and relying upon which the detaining authority has passed the detention order on 27/3/2003 and therefore, according to the learned counsel for the detenu, there is a delay of more than one and half months in passing the detention order. Learned GP has fairly admitted the same. In support of the arguments, learned counsel for the petitioner detenu has relied upon a

judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. It appears that last offence registered against the petitioner on 31/1/2003 and impugned order of detention has been passed on 27/3/2003 and hence, there is a delay of more than one and half months in passing the order. No affidavit has been filed by the respondents explaining the delay satisfactorily, caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned counsel for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned counsel for the petitioner does not press any other points.

5. In the result, the petition is allowed. The impugned order of detention dated 27/3/2003 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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